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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC PORTER,

Defendant and Appellant.

B275835

(Los Angeles County
Super. Ct. No. PA065298)

APPEAL from a judgment of the Superior Court of Los Angeles County. Valerie Salkin, Judge. Affirmed.

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Eric Porter appeals from the order denying his motion to credit pre-sentence custody credit against a 365-day misdemeanor sentence imposed pursuant to Proposition 47. Based on our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 442, we affirm the judgment.

FACTUAL AND PROCEURAL BACKGROUND

Viewed in accordance with the usual rules of appeal (*People v. Zamudio* (2008) 43 Cal.4th 327, 357), the evidence established that defendant and another man were jointly charged by information filed seven years ago on October 30, 2009, with first degree residential burglary (Pen. Code, § 459; count 1); as to defendant, prior conviction/prison term enhancements were alleged pursuant to section 667.5, subdivision (b), section 667, subdivision (a)(1) and the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d))¹. An amended information filed on April 1, 2010, added counts for felony receiving stolen property (§ 496, subd. (a); counts 2 and 6), among other things. A jury found defendant guilty of counts 1, 2 and 6 of the amended information. In November 2010, he was sentenced to a total of 19 years, eight months in prison comprised of 12 years on count 1, plus a consecutive one year, 4 months on count 2, plus a consecutive one year, 4 months on count 6, plus a consecutive 5

¹ All undesignated statutory references are to the Penal Code.

years pursuant to section 667, subdivision (a)(1). Defendant was given presentence custody credit of 639 days, comprised of 427 days in actual custody and 212 days of good conduct credit.

On May 26, 2015, defendant's Proposition 47 motion to reduce count 6 from a felony to misdemeanor was granted. The trial court set aside the felony sentence imposed on count 6 and in its place imposed a misdemeanor sentence which it ordered to run consecutively to the sentence imposed on counts 1 and 2.

On February 18, 2016, while defendant was still incarcerated, he received an "Inmate Notification of Detainer Receipt," stating that he was wanted by the Los Angeles County Sheriff to serve out the 365-day sentence imposed on count 6.

On May 18, 2016, defendant in pro per filed a motion captioned, "Notice of Motion and Motion to Rescind Detainer and Enter Judgment of Time Served Pursuant to Penal Code [section] 2900.5." Defendant argued he had already served the 365-day sentence while awaiting trial. In a declaration attached to the motion, defendant stated he had been incarcerated for 14 months when he was "convicted" on count 6.

On May 27, 2016, the trial court denied the motion. In a written order, the trial court recounted the procedural history of the case and concluded that the "reduction resulted in a net decrease to Defendant's sentence of four months (from 16 months to 365 days). The reduction has no effect on the defendant's pre-

sentence custody credits.” The Felony Abstract of Judgment filed on December 8, 2016 reflects a total term of 18 years, 4 months comprised of 12 years on count 1, plus a consecutive one year, 4 months on count 2, plus a consecutive 5 years pursuant to section 667, subdivision (a)(1).

Defendant timely appealed from the May 27, 2016 order.

We appointed counsel to represent defendant on appeal. After examination of the record, appointed counsel filed an opening brief requesting that we independently review the record pursuant to *Wende, supra*, 25 Cal.3d 436. Appointed counsel stated that he would write to appellant at his place of in incarceration and “advise him of the filing of this Brief and of his opportunity to file a supplemental brief with the court and/or request the court to have present counsel relieved if he so desires.” We advised defendant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider.²

On October 20, 2016, defendant filed a pleading captioned “Request to Have Attorney Removed and Replaced.” The pleading references a letter from appointed counsel informing

² This abstract did not include the 365-day sentence the court reduced under Proposition 47. Thus, the total time defendant was eventually to serve was 19 years, 4 months, which reflects a 4-month reduction under Proposition 47.

him that if he was unsatisfied with counsel's work, he could have the court remove and replace appointed appellate counsel.

Defendant requested that his appointed appellate counsel be removed and replaced, but did not specify any specific reason, other than the letter from appointed counsel. Defendant did not raise any other issues.

We have examined the entire record and are satisfied that appointed counsel fully complied with his responsibilities, there is no legal basis to remove defendant's attorney, and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The order denying defendant's Motion to Rescind Detainer and Enter Judgment of Time Served Pursuant to Penal Code section 2900.5 is affirmed. Defendant's request for new appellate appointed appellate counsel is denied.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.